

FILED

May 18, 2011

Clerk, U.S. Bankruptcy Court

1 Below is an Order of the Court.
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Trish M. Brown
U.S. Bankruptcy Judge

10
11 UNITED STATES BANKRUPTCY COURT
12 FOR THE DISTRICT OF OREGON

13 In re
14 THORNBURGH RESORT COMPANY,
15 LLC,
16 Debtor.

No. 11-31897-tmb11

STIPULATED PROTECTIVE ORDER

17 Subject to the approval of the Court, IT IS HEREBY STIPULATED AND AGREED, by
18 and between counsel for the undersigned parties, that the following Protective Order shall govern
19 the handling of documents, depositions, deposition exhibits, interrogatories, responses, and other
20 written, recorded, or graphic matter, including any information contained therein, produced or
21 exchanged during discovery by any party to these proceedings (this "Action") or by any third
22 party (hereinafter sometimes referred to collectively as a "producing party") responding to a
23 document request (formal or informal) or deposition subpoena in this Action (hereinafter
sometimes referred to as "Discovery Material").

24 **1. Documents and Scope Defined**

25 This Protective Order shall apply to all information and documents hereafter provided by
26 a producing party during the course of this Action, whether written, oral, visual, electronic, or

1 contained in documents or transcripts, or in any other form, that the producing party shall
 2 determine to be and designate as "Confidential" or "Attorneys' Eyes Only." For the purposes of
 3 this Protective Order, the term "documents" shall have the same meaning it has when used in
 4 Rule 34 of the Federal Rules of Civil Procedure and shall include, but not be limited to: written,
 5 recorded, or graphic matter; interrogatory answers filed in this Action; requests to admit and
 6 responses thereto filed in this Action; transcripts of and exhibits to depositions taken in this
 7 Action; and any portions of any court papers filed in this Action which quote from or summarize
 8 any of the foregoing.

9 **2. Disclosure in this Action by Third Parties**

10 Third parties who produce or disclose information in this Action, whether revealed in a
 11 document or deposition, who so elect may avail themselves of the protections of this Order and
 12 thereby become producing parties for purposes of this Order if they agree to be bound by its
 13 terms and conditions.

14 **3. Confidential Information**

15 If the producing party reasonably believes in good faith that Discovery Material contains
 16 or discloses trade secrets or other information that any party reasonably and in good faith treats
 17 as confidential in the usual and ordinary course of its business, such party may designate the
 18 Discovery Material as "CONFIDENTIAL" (hereinafter sometimes referred to as "Confidential")
 19 by stamping or otherwise identifying such documents or information on their face as such.
 20 Confidential documents may include, but not be limited to: (i) the producing party's financial
 21 information; (ii) projected or actual revenues or income data; (iii) information about existing and
 22 potential customers and contracts; (iv) information about affiliates, parents, subsidiaries, and
 23 employees, the disclosure of which may breach duties of confidentiality to the agents,
 24 representatives or customers of the producing party, and any other information for which a court
 25 could grant a Protective Order pursuant to the Federal Rules of Civil Procedure prohibiting
 26 public disclosure of such information. Confidential Information shall expressly exclude that

1 which is public knowledge or is otherwise obtained through sources and means independent of
 2 and without reference to the Confidential Information.

3 **4. Designation of Confidential Information**

4 Any document produced or testimony obtained in this action that is reasonably believed
 5 by the producing party to contain Confidential Information may be designated as
 6 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" as appropriate in light of the following
 7 guidelines:

8 **A. "Attorneys Eyes Only"**

9 Confidential Information designated as "ATTORNEYS' EYES ONLY" shall be reserved
 10 for Confidential Information that the producing party reasonably and in good faith believes
 11 contains or reveals information the disclosure of which to the parties, as opposed to counsel,
 12 would cause substantial, prejudicial and unfair harm, even if the disclosure to the parties is
 13 subject to the protections of "Confidential" information under this protective order.

14 **B. "Confidential"**

15 Confidential Information that falls outside the scope of Section 4 (A) shall be designated
 16 as "Confidential."

17 **C. Procedure for Designation**

18 (a) **Printed Materials.** For printed materials, each page of the
 19 document in which the producing party claims Confidential Information appears shall be clearly
 20 and prominently marked with the legend "CONFIDENTIAL," or "ATTORNEYS' EYES
 21 ONLY," as appropriate.

22 (b) **Electronic Materials.** Data produced in electronic form may be
 23 designated as Confidential Information by marking the disk, tape, or other storage medium with
 24 the appropriate "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" legend. In addition, the
 25 producing party shall, to the extent reasonably possible, add the legend to the electronic file such
 26 that any printout of the file contains the legend.

17 With respect to depositions, the producing party may send written notice to all persons to
18 whom the testimony has been disclosed within twenty (20) business days of receipt of the
19 transcript of a deposition, designating, by page and line, the portions of the transcript of the
20 deposition or other testimony to be treated as Confidential Information. Each party shall attach a
21 copy of such written designation to the face of the transcript and each copy thereof in that party's
22 possession, custody or control. If any ambiguity arises in the course of this Action concerning
23 the portions of a deposition designated as "CONFIDENTIAL" or "ATTORNEYS' EYES
24 ONLY" counsel for the parties shall work together in good faith to resolve any such ambiguity.

1 **5. Objections to Designations**

2 A receiving party shall not be obligated to challenge the propriety of the designation of
 3 Confidential Material as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the time
 4 made, and failure to do so shall not preclude a subsequent challenge thereof. If a receiving party
 5 challenges such a designation, it shall send or give written notice to the producing party of such
 6 challenge and clearly state the basis for the challenge. The producing party shall have three (3)
 7 business days after receipt of a challenge notice to advise the receiving party whether it will
 8 change the designation. If the challenge cannot be expeditiously resolved, the receiving party
 9 may seek an informal telephone conference with the Court. Should resolution of the challenge
 10 not be achieved, the party wishing to remove confidential status may present a motion to the
 11 Court claiming non confidential status. Such motion must be filed no later than thirty (30)
 12 business days after the date of the service of the objection.

13 The Discovery Material at issue shall continue to be treated as "CONFIDENTIAL" or
 14 "ATTORNEYS' EYES ONLY" as appropriate, and subject to the terms of this Order until the
 15 challenge has been resolved by an agreement of counsel or Court order. The producing party or
 16 party asserting the designation of "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" shall
 17 bear the burden of persuasion on this issue.

18 **6. Disclosure of Confidential Information**

19 Confidential Information may be disclosed by the receiving party only to the following
 20 persons:

21 A. outside counsel employed by the receiving party to assist in this Action; the
 22 attorneys, paralegals and stenographic and clerical employees in the respective law firms of such
 23 counsel who are assisting in this Action; and the personnel supplied by any independent
 24 contractor with whom such attorneys work in connection with this Action (including copying
 25 and litigation support service personnel);

1 B. all parties to the Action (including, without limitation, the Debtor, Loyal Land,
2 LLC and Jeffery Parker), and their respective affiliates, directors, officers, managers,
3 representatives, insurers, and employees, including in-house counsel, as outside counsel for that
4 party deems necessary for the purpose of assisting in this Action, except that materials
5 designated "ATTORNEYS' EYES ONLY" may not be disclosed to anyone in this subparagraph
6 (B);

7 C. any bona fide outside consultant or expert who is assisting counsel or a party to
8 this Action to whom it is necessary to disclose Confidential Information for the sole purpose of
9 assisting in or consulting with respect to the preparation of this Action;

10 D. persons noticed for depositions or designated as trial witnesses, or persons a party
11 reasonably and in good faith believes may be noticed for depositions or designated as trial
12 witnesses, to the extent reasonably necessary to testify (such persons shall not retain or copy the
13 Confidential Information, or portions of the transcript of their depositions that contain the
14 Confidential Information, if such information was not provided by them or the entities they
15 represent);

16 E. the Court and any members of its staff to whom it is necessary to disclose
17 Confidential Information for the purpose of assisting the Court in this Action; and

18 F. stenographic employees and court reporters recording or transcribing testimony
19 relating to the Action.

20 Prior to the disclosure of any Discovery Material to any person identified in paragraphs
21 6(C) or 6(D) above, such person shall be provided with a copy of this order, which he or she
22 shall read before signing a Certification, in the form annexed hereto as Exhibit A, acknowledging
23 that he or she has read this Order and shall abide and be bound by its terms. Outside counsel for
24 the party obtaining such signed Certifications shall maintain them in a file and shall make the file
25 promptly available, upon reasonable request, for inspection by the Court or the parties. Persons
26 who come into contact with Discovery Material solely for clerical or administrative purposes

1 (e.g., copy services), and who do not retain copies or extracts thereof, are not required to execute
2 Certifications.

3 **7. Disclosure to Persons Not Otherwise Authorized**

4 If Discovery Material is disclosed to any person other than in the manner provided by this
5 Order, the party responsible for the disclosure shall (without waiver of any of the remedies that
6 the producing party may have hereunder), immediately upon learning of such disclosure, inform
7 the producing party and request the return of the Discovery Material and any copies thereof from
8 each unauthorized person who received such Discovery Material.

9 **8. Exceptions**

10 Nothing shall prevent disclosure otherwise prohibited by this Order if the producing party
11 designating the material as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" (or its
12 counsel) consents in writing to such disclosure, or if the Court, after reasonable written notice to
13 all affected parties, orders or permits such disclosure. Nothing contained in this Order shall
14 preclude any party from using its own Confidential Information in any manner it sees fit, without
15 prior consent of any party or the Court.

16 **9. Limited Use and Disclosure of Confidential Information**

17 Any Confidential Information produced in this Action, shall be used only in connection
18 with the prosecution, defense, or appeal of this Action and shall not be used for any other
19 purpose.

20 **10. Making Copies of Discovery Material**

21 No copies of Confidential Information shall be made except by or on behalf of counsel of
22 record in this case. Counsel of record shall ensure that all copies of Confidential Information
23 remain within their possession or the possession of those entitled to access to this Information
24 under this Order.

1 **11. Protecting Confidential Information at Depositions**

2 No person may refuse to answer any questions at a deposition on the sole ground that the
3 question requires the person to reveal Confidential Information. Depositions shall proceed upon
4 the following basis: prior to answering the deposition question or questions, all persons present
5 other than counsel of record shall be advised of and shall agree to the terms and conditions of
6 this Order and, at the request of the designating party, all persons not authorized to receive
7 Confidential Information under this Order shall leave the room during the time in which this
8 Confidential Information is disclosed or discussed.

9 **12. Use of Confidential Information in Court Pleadings**

10 If a party intends to file documents with the Court that contain or are designated as
11 containing Confidential Information produced in discovery by another party, the filing party
12 shall determine from the producing party whether the particular Confidential Information may be
13 filed in open court. If the producing party does not agree to the filing of the Confidential
14 Information in open court, or to the filing of a redacted version of the documents, the producing
15 party shall work with the filing party to present at ex parte a motion for an order allowing the
16 Confidential Information to be filed under seal, or to seek other protection of the Confidential
17 Information at trial or hearing, according to court practice and procedure. The producing party
18 shall have the burden to establish that the documents sought to be filed justify sealing, or such
19 other protection requested, pursuant to this Court's policy and procedure and applicable law. If
20 the Court denies the motion to file under seal, the Confidential Information shall be filed in the
21 regular course.

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1 **13. Use of Confidential Information at Hearings or Trial**

2 All objections as to admissibility into evidence of the Discovery Material subject to this
 3 Order are reserved until the hearing and trial of this case. The use of Confidential Information as
 4 evidence at the trial of this case shall be subject to an order of the Court as may, at the time, be
 5 reasonably necessary to preserve the confidentiality of the material involved.

6 **14. Effect of Designation on Authenticity and Admissibility**

7 The placing of any confidentiality designation or a production identification label on the
 8 face of any document shall have no effect on the document's authenticity or admissibility in this
 9 Action.

10 **15. Inadvertent Production**

11 If the producing party inadvertently produces or discloses any Confidential Information
 12 without marking it with the appropriate legend, the producing party may give notice to the
 13 receiving party, no later than thirty (30) days following the actual discovery of the disclosure,
 14 that the information should be treated in accordance with the terms of this Protective Order, and
 15 shall forward appropriately stamped copies of the items in question. Within ten (10) days of the
 16 receipt of substitute copies, the receiving party shall return the previously unmarked items and
 17 all copies thereof. The inadvertent disclosure shall not be deemed a waiver of confidentiality,
 18 and such designation may be made as soon as possible after the discovery of the inadvertent
 19 production or disclosure.

20 Inspection or production of documents (including physical objects) shall not constitute a
 21 waiver of the attorney-client privilege or work product immunity or any other applicable
 22 privilege or immunity from discovery if, as soon as reasonably possible after the Producing Party
 23 becomes aware of any inadvertent or unintentional disclosure, the producing party designates
 24 any such documents as within the attorney-client privilege or work product immunity or any
 25 other applicable privilege or immunity and requests return of such documents to the producing
 26 party. Upon request by the producing party, the receiving party shall immediately return all

1 copies of such inadvertently produced privileged or work product doctrine-protected
 2 document(s). Nothing herein shall prevent the receiving party from challenging the propriety of
 3 the attorney-client privilege or work product immunity or other applicable privilege or immunity
 4 designation by submitting a written challenge to the Court.

5 **16. Return of Discovery Materials**

6 Upon the conclusion of this Action, including any appeals related thereto, all Discovery
 7 Material and any and all copies thereof shall be returned within sixty (60) calendar days to the
 8 producing party or destroyed, with the receiving party to provide to counsel for the producing
 9 party a declaration under oath reflecting such disposition. However, counsel may retain their
 10 attorney work product and all court-filed documents even though they contain Confidential
 11 Information. Such retained work product and court-filed documents shall remain subject to the
 12 terms of this Order.

13 **17. No Waiver**

14 The designation pursuant to this Order by counsel for the producing party of any material
 15 as constituting or containing Confidential Information is intended to facilitate the preparation and
 16 trial of this case, and such designation shall not be construed in any way as an admission or
 17 agreement by any other party that the designated information constitutes or contains any trade
 18 secret or confidential information as contemplated by law.

19 Nothing herein shall be construed to affect in any manner the discoverability, relevance
 20 or admissibility of any document, testimony, or other evidence.

21 **18. Subpoena by Other Tribunal or Agencies**

22 Any party to this Action that is served with a subpoena or other notice by a non-party in
 23 another proceeding requesting or compelling the production of any Discovery Material produced
 24 by a producing party in this Action shall give immediate written notice to that original producing
 25 party of such subpoena or other notice and shall cooperate with the producing party in protecting
 26 the Discovery Material from disclosure. While a motion for protective order is pending, the

1 requested material shall not be produced. Provided however, if notice is not permitted by
2 applicable law or order, this provision shall not require a party to violate same.

3 **19. Application to Court**

4 This Protective Order is without prejudice to the right of any interested party to apply,
5 upon reasonable notice to the producing party, for an order permitting the disclosure of any
6 Confidential Information or to apply for an order modifying or limiting this Protective Order in
7 any respect.

8 **20. Modification of Protective Order**

9 This Protective Order may be modified by written stipulation among all the parties if
10 approved by the Court. Absent stipulation, any party may seek modification by proper
11 application to the Court.

12 **21. Continuing Jurisdiction**

13 All provisions of this Protective Order shall continue to be binding after the conclusion of
14 this Action in its entirety, unless subsequently modified by agreement between the parties or
15 order of the Court, and the Court shall retain jurisdiction of this matter for the purpose of
16 enforcing this Protective Order.

17 **22. Production of Documents**

18 All documents produced pursuant to a subpoena and subject to this Protective Order shall
19 be produced at the producing party's place of business or as otherwise agreed by and between the
20 parties. The requesting party shall pay the reasonable copying costs for all documents requested
21 during this litigation.

22 **23. Application in Arbitration or Other Proceeding**

23 The provisions of this Protective Order shall continue to be binding throughout the
24 duration of this Action. To the extent the parties engage in discovery during any arbitration or
25 other proceeding, the terms of this Protective Order shall be maintained, and any dispute to be
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1 resolved by the Court shall be resolved by the arbitrator(s) or other such persons in control of the
2 discovery process.

3 **24. Termination**

4 This order shall continue in force until amended or superseded by express order of the
5 Court. The termination of proceedings in this Action, to include the exhaustion of all appeals,
6 shall not relieve the persons described above from the obligation of maintaining the
7 confidentiality of all Confidential Information received pursuant to this Order.

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10 **STIPULATED AND AGREED TO:**

11 **LAW OFFICE OF GARY U. SCHARFF**

12 **PERKINS COIE LLP**

13 By: /s/ Gary U. Scharff
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35
36 Attorneys for Loyal Land, LLC

37 cc: Via ECF Notification to:
38 Gary U. Scharff
39 Justin D. Leonard
40 U.S. Trustee

41 Via U.S. Mail to:
42 Sandra L Knapp

43
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46 Portland, OR 97209-4128
47 Phone: 503.727.2000
48 Fax: 503.727.2222

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EXHIBIT A

To Protective Order

4 Entered on _____, 2011

I have read the Protective Order (the "Order") entered by the Court on _____,
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2011, in *In re THORNBURGH RESORT COMPANY, LLC*, United States Bankruptcy Court for
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the District of Oregon Case No. No. 11-31897-tmb11, a copy of which Order is attached to my
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copy of this statement. I understand the responsibilities and obligations the Order imposes on
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persons relating to the material encompassed by the Order and I agree to be bound by its terms. I
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agree to treat all materials designated as "Confidential Information," all copies, notes or other
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records containing or referring to such materials, and the substance or contents of such materials
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in accordance with the terms of the Protective Order. I also agree with the requirements of
13
paragraph 14 with respect to the disposition of documents upon conclusion of the litigation.

I agree to be subject to the jurisdiction of the United States Bankruptcy Court for the District of Oregon for purposes of enforcing the terms of this Protective Order.

¹⁷ _____

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Sworn to before me this _____ day of

Notary Public of Oregon

My Commission Expires: